

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KIA CORP. and TOYOTA MOTOR CORP.,
Petitioners,

v.

EMERGING AUTOMOTIVE, LLC,
Patent Owner.

Case IPR2024-01167
Patent 11,738,659 B1

Record of Oral Hearing
Held: October 27, 2025

Before GEORGIANNA W. BRADEN, FRANCES L. IPPOLITO, and
DANIEL J. GALLIGAN, *Administrative Patent Judges*.

APPEARANCES:

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The above-entitled matter came on for hearing Monday, October 27, 2025, commencing at 11:00 a.m., at the U.S. Patent and Trademark Office, Southwest Regional Outreach Office, 207 South Houston Street, Room 155, Dallas, Texas.

P-R-O-C-E-E-D-I-N-G-S

11:00 a.m.

JUDGE BRADEN: Good morning. We are convened here for oral arguments in IPR2024-01167, which challenges claims in U.S. Patent No. 11,738,659. I am Judge Braden. Also appearing are my colleagues, Judge Galligan in person and Judge Ippolito via video.

Welcome to the USPTO's Southwest Regional Outreach Office. I want to take this opportunity to address Counsel and their clients before we begin. As an Inter Partes Review is a contested proceeding, today's hearing provides an opportunity for Counsel to orally advocate for positions on the patentability of the challenge claims as raised in the petition.

We understand that in every case that comes before us, the parties, both Petitioner and Patent Owner, have a lot at stake. The judges before you today take our role in deciding this dispute seriously. We have reviewed the briefs and evidence, and we are prepared today with questions. Probably a lot of questions.

These questions and their answers will help us to decide the issues in the case. In the interest of fairness and due process, we must limit our consideration to the arguments and evidence already present in the record. Our role as judges on the panel is to assess your arguments and evidence and weigh those in accordance with the burdens established by our rules of procedure and precedential authority. We remind the parties that Petitioner has the ultimate burden of establishing unpatentability by a preponderance of the evidence.

We have the briefs and evidence available to us on our computers. So, if we look away or look down during the hearing, we are consulting the

1 documents in the record and/or we're taking notes. Please know that we are
2 paying close attention to your arguments and carefully considering the case.

3 And I apologize in advance, but when we interrupt you, we do so to
4 be able to ask you questions that may be essential to our resolution of the
5 issues or to keep the hearing on track with time.

6 Now, let's go through some housekeeping issues. Recording of any
7 PTAB hearing is prohibited. The court reporter will provide a transcript of
8 the hearing that will become part of the record in the proceeding at a later
9 date. To ensure that the transcript of this hearing is clear, we ask that you
10 speak directly into the microphone when talking and to identify specific
11 slide numbers, numbering and figures, and any other pertinent identifying
12 information when referring to your demonstratives. Please note that this
13 proceeding is public and that there may be those listening in on the public
14 line. I have confirmed that there is a public line today. So, if the parties
15 wish to discuss any confidential information, please notify us before doing
16 so.

17 Per the hearing order, which is Paper 32 in this proceeding, each party
18 has 30 minutes total time to argue their case. Petitioner will open the
19 argument and may reserve rebuttal time, which may not exceed more than
20 half of Petitioner's total argument time. Patent Owner then will respond to
21 Petitioner's arguments and may reserve surrebuttal time, also not to exceed
22 more than half of Patent Owner's total argument time.

23 Please remember that your arguments should be limited to only those
24 arguments previously presented in your briefs. Please make it clear which
25 challenges and claims you're addressing at all times. We ask that the parties

1 hold any objections regarding a party's arguments until it is your time at the
2 podium in order to note your objections.

3 Let us go ahead and get started with appearances for both parties for
4 those who will be arguing today. If anyone else is attending in person or
5 remotely with you but is not going to be speaking, please identify them as
6 well. For example, please state if your client is attending.

7 Following the hearing, please confer with this court reporter to ensure
8 that there's no questions regarding the spelling of names. So we're going to
9 go ahead and start with Petitioner.

10 MR. GLASS: Good morning, Your Honor, Jim Glass for Petitioner.
11 With me today is Counsel Ron Deese for Petitioner Kia. With me today is
12 also counsel for Toyota. I'll allow them to make their appearances.

13 MR. GOLDBERG: Good morning, Your Honors, Joshua Goldberg
14 for Petitioner at Toyota. And with me I have my colleague, Nicholas Eitsert.

15 JUDGE BRADEN: Thank you very much, Counselor.

16 MR. GLASS: And we had --

17 JUDGE BRADEN: Go ahead, Counsel.

18 MR. GLASS: One quick point. You mentioned that the parties had a
19 half-hour per side. I believe it's an hour for each side.

20 JUDGE BRADEN: No, 60 minutes. Sixty minutes total time per
21 side.

22 MR. GLASS: Okay. Thank you, Your Honor.

23 JUDGE BRADEN: We understand that Kia Corporation is
24 designated as lead Counsel for Petitioners. Please confirm that that is
25 correct.

26 MR. GLASS: Correct.

1 JUDGE BRADEN: Thank you very much. Now for Patent Owner's
2 Counsel.

3 MS. ENTZMINGER: Good morning, Your Honors. It's Brenda
4 Entzminger for Patent Owner, Emerging Automotive, LLC. And also on the
5 public line is our client representative.

6 JUDGE BRADEN: Very good. Thank you very much. Now, I will
7 maintain a clock, as you can see on the bench, and I will endeavor very best
8 to give each party a five-minute warning during their opening argument.
9 And I will try to give you an appropriate warning near the end of any
10 reserved rebuttal time.

11 As you can see, the hearing room has a timer, and I've set it up for
12 each party with the requested time allotted. Now, the light on the clock
13 changes to yellow when you're nearing the end of your time, whether
14 opening or rebuttal. When the light is red, you have run out of time, and that
15 means you should end your argument.

16 Petitioner, do you wish to reserve any rebuttal time?

17 MR. GLASS: Yes, Your Honor. Optimistically, I'll reserve 20
18 minutes, please.

19 JUDGE BRADEN: Very good. Thank you. And Patent Owner, do
20 you wish to reserve any rebuttal time, which please note, can be changed
21 when it's your turn at the podium?

22 MS. ENTZMINGER: Yes, Your Honor, ten minutes, please.

23 JUDGE BRADEN: Very good. Are there any questions or issues that
24 the parties would like to raise before we begin, starting with Petitioner?

25 MR. GLASS: No, Your Honor.

26 JUDGE BRADEN: Patent Owner?

1 MS. ENTZMINGER: No, Your Honor.

2 JUDGE BRADEN: Very good. Petitioner, you may begin your
3 arguments when ready.

4 MR. GLASS: Give me a moment to set up. I do have printouts.

5 JUDGE BRADEN: And I will not start the clock until you're ready to
6 go.

7 MR. GLASS: It's going to take me one minute. All right. Everyone
8 can see the screen? All right. Well, thank you, Your Honors, again, Jim
9 Glass for Petitioner. Issues here -- a lot of the issues here today are the same
10 as the '188 proceedings. I'm going to jump right to the positions. I know
11 Your Honors are familiar with the record. So I will start with the Kleve-
12 based grounds and what I believe are really the primary issues between the
13 parties.

14 For the most part, I'll probably exclusively focus on Kleve today. If I
15 have time, I may go through Mikan-based grounds, but for the most part I
16 will focus on Kleve. Now, just like in the '188 petition, Patent Owner really
17 doesn't dispute most of the limitations of the claims. For the most part,
18 Patent Owner disputes -- well, almost exclusively disputes the notion of the
19 privileges and whether the privileges are included -- excuse me -- whether
20 the privileges are included in coded data as restrictions associated with a V-
21 key. That is one minor difference between this case and the last case.

22 And on surreply, Patent Owners raised a brand new argument whether
23 the V-key was transmitted to the vehicle. That's not an argument we saw in
24 the POPR, not an argument we saw in the POR. It is an argument they
25 raised for the first time in the surreply. And I will focus on those two
26 arguments mostly for the majority of my presentation.

1 Now, I'll jump to Slide 40, and Your Honors, a lot of this you've seen
2 before. But again, so the record is clear, I am going to go through this just
3 like I did in the '188 patent. I'll go through our proof first and then I'll go
4 through -- I'll spend a lot of time on Patent Owner's response points with
5 respect to whether Kleve expressly discloses a virtual key that that is
6 associated with restrictions and coded data and also whether that coded data
7 is then sent to the vehicle. It is expressly disclosed in Figure 6.

8 And I'll just to set the table. I'll walk through some of the elements in
9 Figure 6 and in connection with paragraph 69. Figure 6 expressly discloses
10 that the -- and I, for the record, I am annotating the slides. If it matters to the
11 record, I'll point out what I'm pointing to, but I'll make it clear what I'm
12 speaking to.

13 JUDGE BRADEN: I think that would probably be very helpful, both
14 for the record and for Judge Ippolito.

15 MR. GLASS: I will make absolutely certain to do so. So I'm on Slide
16 40. I am focused on Figure 6, just pointing to step 604. The users -- the
17 owner's nomadic device generates virtual key and vehicle restrictions
18 simultaneously. We see then at step 616 -- and I'm just annotating step 616 -
19 - the temporary user receives that virtual key.

20 Now, what's critical is not only the description of the figures, but also
21 the description in Figure 6 and -- excuse me -- in paragraph 69. Paragraph
22 69 states very clearly that the virtual key is generated -- and it's on the
23 bottom of paragraph 69 on the last portion of the highlighted section -- the
24 virtual key is generated and sent to the temporary user.

25 So it is mandatory in connection with Figure 6 that that virtual key is
26 sent to the renter. It goes on to say that that key may be delivered to the

1 vehicle. This is going to become important later. I'm going to hit this
2 repeatedly today, that Figure 6 and many of the figures are mandatory that
3 the virtual key is always sent to the renter.

4 In some cases, it may be delivered to the vehicle, but it is always in
5 connection with Figure 6 that it is always sent to the renter. Figure 6 goes
6 on. Figure 6 states that the temporary user may enter or send the virtual key
7 to the vehicle to begin the rental -- to begin the rental term. That is an
8 express disclosure of what Patent Owner's claim is missing from Kleve that
9 the -- and there's more. I'll get to that in a bit.

10 But that is an express disclosure of the renter sending that virtual key
11 to the vehicle and the vehicle -- and using that to begin the rental term. So
12 we have a restriction. We have the rental term. It is sent from the owner to
13 the renter and from the renter through his device to the vehicle. It could not
14 be clearer in Figure 6, and this is just one example. I'm going to go through
15 more.

16 JUDGE BRADEN: And Counsel, I want to ensure that I make sure of
17 this, that it is Petitioner's position that the alleged coded data, the privilege
18 setting is the rental period and that is sent with coded data from a mobile
19 device --

20 MR. GLASS: Correct.

21 JUDGE BRADEN: -- or used from a mobile device by the temporary
22 user; is that correct?

23 MR. GLASS: Correct. There are others. And I will get to this in a
24 moment. We pointed to geofencing, weight restrictions, and importantly,
25 this is in response to Patent Owner's surreply, unauthorized users. And that
26 was in Dr. Almeroth's declaration in paragraph 139.

1 JUDGE BRADEN: So those are all included with the E-key?

2 MR. GLASS: Those are not. Those are included in the coded data
3 that is sent from the renter's device to the vehicle, and it is associated with
4 the V-key. It could be part of the V-key, but the claims only require that it
5 be associated with the V-key.

6 Does that answer your question?

7 JUDGE BRADEN: What does that mean, "associated with"?

8 MR. GLASS: If there's -- and this gets to a point that Patent Owner, I
9 think, is going to raise in their slides, that, for example -- and in connection
10 with Figure 6, it states that the virtual key -- I am going to walk through this,
11 but I'll give you a preface of what I'm going to go through.

12 It states that the V-key is generated using facial recognition data.
13 Then facial recognition data is sent to -- that V-key is sent to the renter, and
14 the renter sends personal settings, which includes facial recognition data.
15 Well, that facial recognition data is my face. And it was used to create the
16 virtual key. That's an association. That's one example that Kleve gives of an
17 association.

18 JUDGE BRADEN: All right. Thank you, Counselor.

19 MR. GLASS: And so the record's clear, So I make this clear, that's in
20 paragraph 69, 71, and 72 of Kleve.

21 JUDGE BRADEN: All right. Thank you, Counselor.

22 MR. GLASS: I think importantly, though, in paragraph -- excuse me.

23 In Figure 6, Kleve is very clear that once we receive -- once the
24 vehicle receives that virtual key, this is at step 622, it uses the virtual key to
25 enter and start the vehicle and apply vehicle restrictions. Now, we don't --
26 there's not much disclosure in the specification of what that means.

1 In fact, there's really nothing that discusses that, but step 622 is clear
2 on its face. We have an embodiment where the renter and only the renter
3 receives that virtual key. It is then sent to -- from the renter to the vehicle.
4 And at step 622, it states explicitly that the vehicle uses that virtual key to
5 enter, start vehicle, and apply vehicle restrictions. So that is one express
6 example, I think, of first what we point out in the petition of restrictions
7 being associated with the V-key and response to certify of that information
8 being sent as coded data from the vehicle -- from the renter to the vehicle.

9 I'll move on to Slide 41. Your Honors have seen the slide at the last
10 hearing. Your Honors focused on this as we did in our petition. Kleve
11 expressly states that the virtual key is enabled during -- is enabled for a
12 given rental period. Now, Patent Owner has argued -- I'll get to this in a bit,
13 but Patent Owner has argued that as they did in the '188 proceeding, that the
14 only point at which the -- Kleve discloses entering restriction is at step 214.

15 Based on that premise, Patent Owner argues that, well, the V-keys are
16 distributed at step 210, which is before step 214. That V-key cannot
17 possibly have restrictions. That does not negate the very clear language in
18 Figure 2 that the virtual key is enabled during a given rental period.

19 I'll point out that in connection with step 214, the description of step
20 214 never states that the owner can set a rental period. It can be extended; it
21 can be terminated. But the only point at which a rental period is set is by
22 virtue of distributing that rental key. So it is absolutely a very clear
23 disclosure in Kleve of a restriction on the use, that the virtual key is
24 associated with that given rental period.

25 I'll also point out again to Patent Owner's remark and argument in the
26 surreply that the virtual key is always sent to the vehicle. Even in Figure 2,

1 it's permissive as to whether the virtual key is sent to either the renter or the
2 vehicle. It -- the system may -- this is in paragraph 39 -- may generate a
3 virtual key to distribute to the temporary user, and it may be sent to the
4 vehicle.

5 So in Figure 6, it's permissive that it's sent to the vehicle. It's
6 mandatory that it's sent to the renter. In Figure 2, it's permissive. You sent -
7 - you can send it to the vehicle. You can also send it to the renter. So again,
8 no disclosure in Kleve that it's always sent to the vehicle.

9 Now, there is a reason on Slide 44 -- there is a reason -- excuse me.
10 I'm sorry. My plug fell out of my laptop.

11 There is a reason in Kleve why that rental period is associated with
12 the virtual key. It is because that virtual key can enable a renter to gain
13 access to the vehicle just by virtue of that virtual key; gain access to the
14 vehicle or drive the vehicle away. This is explicitly stated in paragraph 48,
15 which is in connection with Figure 3.

16 Kleve states that the virtual key may permit entry of the vehicle and
17 grant a keyless drive-away, period. Now, there are other environments in
18 Kleve where there are other things that are required; credentials, a password,
19 other types of authentication. But at least in paragraph 48, that virtual key
20 and that virtual key alone both grants the user access and the ability to drive
21 away.

22 Patent Owner says that there's no need to have additional security with
23 the virtual key. This is why. If a virtual key is distributed before the rental
24 period begins -- we saw that in connection with Figure 2 -- it is critical that
25 the virtual key only be enabled for the rental period; otherwise, a renter
26 would be able to go up to a vehicle before a rental period started, gain

1 access, and ostensibly, at least in connection with paragraph 48, drive the
2 vehicle away.

3 So it's not just something that's a one-off statement. It is critical to
4 Kleve that that rental period builds into and is associated with that virtual
5 key. Now I'm going to jump -- I'll jump to Slide 48. This is exactly what
6 our expert testified to.

7 This is Dr. Almeroth's testimony. I'm citing to paragraph 139 of his
8 declaration. Dr. Almeroth and Your Honors credited this testimony in your
9 institution decision. Dr. Almeroth testified that the restrictions that Kleve
10 discloses, restrictions on the type of use of the vehicle by using the virtual
11 key, which includes when -- I'm looking at really the bottom of the last three
12 lines of paragraph 139 on Slide 48 -- when the virtual use to be taking place.
13 And that's the language Your Honors credited in the institution decision.

14 I also pointed out that he referred to unauthorized use. That's on the
15 last line of -- I'm going to apologize. My allergies kicked in the instant I got
16 off the plane today, so I'm trying to prevent myself from coughing.

17 But on the last line of paragraph 139, Dr. Almeroth also stated that an
18 unauthorized user is another restriction, so preventing people who are not
19 the actual renters from using the vehicle. That is another restriction that he
20 refers to. That's going to be important in a minute, and I'll get to that in
21 response to Patent Owner's surreply positions.

22 I won't belabor this. On Slide 50, I have the institution decision. This
23 is exactly what Your Honors concluded, that Kleve expressly disclosed or
24 taught the E-key that includes a privilege, including the rental period. And
25 Your Honors credited the same testimony from Dr. Almeroth that I just
26 pointed to in paragraphs 138 and paragraphs 139.

1 JUDGE BRADEN: Just to be clear, that was in the decision to
2 institute, which is a different burden. It's reasonable likelihood, and we were
3 very clear to say that it was based on the information we were given at that
4 stage of the proceeding.

5 MR. GLASS: Absolutely, Your Honor. And I in no way meant to
6 imply that that was a binding decision. At that time, that is the preliminary
7 finding from Your Honors at that at that point.

8 JUDGE BRADEN: Thank you.

9 MR. GLASS: I'll jump ahead to Slide 57. So that is for the most part
10 -- actually let me -- so that's, for the most part, our proof on that point.
11 We've raised other points in the briefs, but I think that's really the focus of
12 what we went through; Figure 6, Figure 2, the rental agreements, the rental
13 term.

14 I'd like to spend some time going through Patent Owner's responses
15 and Patent Owner's arguments. I'll start on Slide -- I'm on Slide 57. I will
16 start with Patent Owner's surreply argument, and this -- again, I mentioned
17 this. I'll say this maybe once or twice more. This is a brand new argument.
18 They did not raise this argument in the POR. They are not raised in the
19 POPR. Patent Owners argue, and they attempt to tie this to an admission
20 that we made in our reply. I'll walk through that. It's not true.

21 Patent Owners argue that, in Kleve the vehicle -- the virtual key is
22 always sent in each and every embodiment. It is always sent to the vehicle.
23 It is never sent through the owner's -- the renter's device. In fact, I think it's
24 in pages seven through eight, eight through nine. They argue that it is a
25 unilateral points-to-points connection. It's from the server to the renter, from

1 the server to the vehicle, from the server to the owner. It's never through the
2 renter's device.

3 That's flat-out incorrect. I've already shown that in connection with
4 Figure 6, but Kleve also expressly discloses this in other contexts. So before
5 I get to that, I'll also point out that this is an entirely inconsistent position
6 that Patent Owner is raising.

7 Patent Owners are arguing on surreply the V-key is always sent to the
8 vehicle. I'm just going to jump to Slide 156. In connection with the POR,
9 Patent Owner argued the exact opposite. I'm on slide 156, the POR 7 and 8,
10 Patent Owners argued that -- switch to a highlighter -- Kleve does not teach
11 that the parties' agreed upon conditions are ever included in the setup or
12 eventual distribution of a virtual key or provided to the vehicle. So in
13 surreply, they say it's always provided to the vehicle. In the POR, it's never
14 provided to the vehicle, and they don't explain that inconsistency.

15 On Slide 59. I think that may be the reason why Patent Owners
16 attempted to tie this to an alleged admission we made in our in a reply. It's a
17 little unclear at points in the surreply they affirmatively state that Kleve
18 requires that the virtual key is sent only for the vehicle or sent to the vehicle
19 and not through the renter's device. At other points, they attempt to claim
20 that it's an admission that we make. They cite to pages three through five of
21 the reply. In pages three through five, I'm on Slide 59, I will point out, we
22 were not even addressing this point. We were addressing the point that
23 Patent Owner's argument, Kleve teaches assigning and enforcing restrictions
24 after the rental period. This is their step 214 argument. We were addressing
25 that, no, Kleve teaches assigning and enforcing restrictions before the rental
26 period.

1 Now, in connection with that, we simply stated that the virtual key is
2 generated and then sent to the temporary user. In connection with that, the
3 restrictions are delivered to the vehicle at step 606. That is an accurate
4 statement. Remember, Kleve in Figure 6 -- I just walked through this --
5 permissibly allows the owner to send the virtual key to the vehicle.

6 So we were not even addressing that point. We were simply pointing
7 out that the restrictions are sent to the vehicle. It wasn't a point that we were
8 making that Kleve is somehow limited to always sending that virtual key to
9 the vehicle. That is an accurate statement. We could have said it is
10 permissively sent to the vehicle, but that is nevertheless an accurate
11 statement and in no way is an admission that Kleve only describes sending
12 the key to the vehicle.

13 Now, I am going to walk through some -- and a lot of this is -- a lot of
14 this is going to be responsive to the surreply, Patent Owner's position that
15 Kleve never discloses sending the virtual key to just the renter. That is
16 expressly disclosed in Patent Figure 3.

17 Figure 3, paragraph 48, Kleve expressly states that in step 322 the
18 vehicle rental micro-business system may generate and deliver virtual keys
19 to the temporary user, full-stop, period. There is no disclosure in Figure 3 of
20 ever sending the virtual key to the vehicle. So I'll point out at page two of --
21 page two of the surreply, Patent Owner, are -- has affirmatively stated that --
22 I'm not going to state that. I'm going to summarize that at best. We have --
23 Petitioners provided a basis for including a restrictions with a virtual key
24 sent to a vehicle because of their position that it's never just sent to the
25 renter. Well, here's one disclosure. Figure 3 just sends the virtual key to the

1 renter and only the renter. There's no disclosure of sending it to the vehicle,
2 permissive or otherwise.

3 On Slide 61, I've already gone through the disclosure of Figure 6 and
4 of 69, but Figure 6 also -- in the connection with Figure 6, Kleve also
5 expressly discloses, as I prefaced earlier, sending -- creating a virtual key
6 using facial recognition and sending that to the vehicle through the renter's
7 device. I'll jump ahead to Slide 123. I highlighted portions of here where
8 I'm going to highlight only because I can't see the screen. So I just want to
9 know where I'm going to start highlighting.

10 And again, just to set the table, I'm on paragraph -- on Slide 123,
11 Kleve, I'm reading from paragraph 69. It starts off by saying, We create a
12 virtual key using facial recognition. Another exemplary embodiment --
13 another exemplary -- one second.

14 Another exemplary embodiment of generating a virtual key may be
15 done by using the temporary user's credentials, including facial recognition.
16 So we're creating a virtual key using facial recognition.

17 At paragraph 72 -- and that -- excuse me. That virtual key is generated and
18 is sent to the temporary user. So we have a virtual key that's created using
19 facial recognition, and it is sent to the temporary user. Paragraph 72, the
20 user's nomadic device may be paired with the VCS, the vehicle computer
21 system, and send personal settings to the vehicle. So we're sending from the
22 renter's device personal settings that includes facial recognition to recognize
23 and deliver using -- to recognize the driver. So we're delivering facial
24 recognition coded data that is associated with the virtual key that was
25 associated with the virtual key back in paragraph 69.

1 To wrap this up, in paragraph 73, during rental terms, the VCS may
2 monitor the temporary user's utilization of the vehicle and that of the actual
3 authorized renter is the one driving the vehicle using facial recognition
4 software. So we have not only the disclosure in Figure 6 that I walked
5 through earlier with the -- that the virtual key is used to apply restrictions.

6 This is an express walkthrough. Paragraph 69, 72 and 73. Facial
7 recognition is associated with the virtual key. It is sent to the renter in
8 paragraph 72, and then the renter sends that through his cell phone to the
9 vehicle, and the vehicle uses that as a restriction. So again, to Patent
10 Owner's point, and this is specifically in pages 8 to 9 of their surreply, that
11 Kleve never describes sending information from the server through the
12 renter's cell phone to the vehicle. It's expressly disposed here.

13 That's not it. There's more. I'm going to walk through two other
14 examples that I think are very instructive. Slide 117, I'm looking at
15 paragraph 8 of Kleve. This is not -- this is a summary of the invention. This
16 is not tied to any specific embodiment. And Kleve expressly states that the
17 second embodiment, a vehicle rental -- I'm sorry -- the exemplary method is
18 performed by a processor and includes establishing a communication with a
19 wireless device brought within proximity of a vehicle. So that's the renter
20 getting close to the vehicle to establish his wireless communications,
21 receiving a user identifier. That's another name for a virtual key. That's the
22 term the claims use for virtual key. So receiving a universal identifier from
23 a vehicle rental administration system, the server, through the wireless
24 device.

25 So again, we're sending a virtual key from the server through the
26 renter's device to the vehicle, and then that is then used -- the processor is

1 used to activate the vehicle during the rental period. Express disclosure in
2 connection with Figure 6. Express disclosure in connection with Figure 8.
3 Excuse me, paragraph 8. Paragraph 9, I'm not going to walk through it.
4 Same thing, slightly different words, but it says exactly the same thing.

5 I'm sorry. I think -- Your Honor, were you looking at that? Would
6 you like me to go back to that slide?

7 JUDGE BRADEN: No. Thank you. I understand.

8 MR. GLASS: One more point on this before I move on, I'm going to
9 jump to paragraph -- Slide 118, and I'm going to point -- this goes to, again,
10 Patent Owner's point in the surreply that Kleve never discloses sending
11 information from the server, through the renter's device to the vehicle.
12 Again, an express disclosure of just that in paragraph 31.

13 This is a little more specific than paragraphs 8 and 9. In one
14 embodiment, incoming data can be paired through the nomadic device via,
15 for example, Bluetooth transceiver, and into the vehicle's internal processor.
16 So again, we have information coming from the server through the nomadic
17 device, going directly into the vehicle.

18 So I think that's it on that. I just want to make sure I have nothing else
19 on that point before I move on. I will point out -- and I normally don't try to
20 anticipate what Patent Owners are going to say from their slides. It's just
21 better for me to do it here because I've already gone through all this. It'll
22 save time on rebuttal.

23 Patent Owner, it appears, is going to argue through their slides that
24 there was some inconsistency between what I said at the '188 and what we're
25 arguing over here, specifically, Judge Galligan asked -- I don't have the page
26 numbers in front of me, but you asked Counsel at the last hearing whether it

1 was sufficient for the claims of the '188 that the -- there was -- I believe the
2 language is like, was there a server check for the virtual key? Does the --
3 does -- do the restrictions have to be included in the virtual key?

4 I don't believe Counsel answered that question. I responded, and I
5 said in paragraph 71, absolutely, there is a server check, and that is all that
6 you need for the '188 claims because the '188 claims simply require that the
7 virtual key is associated with the restrictions.

8 And in connection with the '188, that disclosure maps to the claims.
9 Here we're pointing to slightly different disclosure. The claims require
10 sending coded data from the renter's device to the vehicle, and that coded
11 those restrictions are associated with V-key. So Kleve not only discloses the
12 server check, it also discloses explicitly what Patent Owner says is missing.

13 So to the extent there's any suggestion of an ambiguity or a
14 disconnect, the arguments are all consistent. What I said last time is
15 consistent and accurate and correct. And what I'm saying this time is also
16 consistent because Kleve discloses both. Kleve discloses paragraph 71,
17 doing a server check, but it also very clearly discloses sending those
18 restrictions from the user's device included in the coded data. And I've just
19 walked through all of that.

20 JUDGE BRADEN: So -- and just to clarify, it was paragraph 71 of
21 Kleve that you claim has the server check, correct?

22 MR. GLASS: I'm going from memory, Your Honors. I had notes. I
23 don't know what I did with them, but I believe at the last hearing I said in
24 connection with paragraph 71 there was a server check. And that again was
25 in response to Judge Galligan's question. But that makes sense because,
26 again, in the '188 claims, they only require that the restriction be associated

1 with the virtual key. And that's -- I simply suggested that that was one way
2 you could map it.

3 It's not required that the restrictions actually be included in the virtual
4 key. It's a little bit different here because the claims require coded data
5 being sent from the renter's device to the vehicle. That includes restriction
6 settings associated with virtual key. What I'm pointing out is that Kleve
7 expressly discloses both.

8 JUDGE BRADEN: Very good. Thank you.

9 MR. GLASS: I'll move on to another point Patent Owners raise on
10 Slide 51, specifically that the -- and this is -- I'm getting into territory that we
11 discussed last time. This is very similar to a point that Patent Owner raised
12 in the '188 hearing, that Kleve discloses sending a virtual key to a renter
13 before a rental agreement is in place. And Dr. Almeroth admitted that he
14 was wrong.

15 So a little bit of a difference in this case. In this case, Dr. Almeroth, in his
16 declaration, he testified to various embodiments. I think it was Figures 2, 3
17 and 6. And in his declaration, he said, in these embodiments, the virtual key
18 is generated after the agreement is reached. He didn't use the word
19 "always," but Your Honors looked at those -- that testimony and concluded
20 at the preliminary stage that he said it's always generated. That's true. I just
21 wanted to point out that slight little difference from the last hearing, but it's
22 still true.

23 In Kleve, the virtual key is always generated after the rental
24 agreement. It is. And Your Honors were correct in interpreting his
25 testimony to be that's what he said. He said in the embodiments he
26 reviewed, it is always generated after the rental. Patent Owners in their -- I

1 think it's in their surreply, Patent Owners argue that, well, he admitted that
2 he's wrong. He admitted that it's not always generated after the agreement is
3 in place. That's wrong. I'll walk through his testimony.

4 It's also incorrect; Kleve never discloses that the virtual key is sent
5 before a rental agreement's in place. It makes no sense. It makes no sense,
6 and it's not disclosed. I'll jump to Slide 161. I'm not -- I spent a lot of time
7 on this testimony at the last hearing. I'm just going to point to what I think is
8 the highlight here. I'll urge Your Honors -- I'm on Exhibit 2022, page 28 of
9 Exhibit -- of Slide 163.

10 This line of questioning goes on for about ten pages, from page 20 to
11 page 30. I would urge Your Honors, I know you've reviewed all of the
12 evidence, to look at this. In particular, Dr. Almeroth never admitted that he
13 was wrong. Dr. Almeroth's testimony is an absolute model of clarity on this
14 point. There's no inconsistency between what he said in his deposition and
15 what he said in his declaration, and certainly no inconsistency between what
16 he said here in the last case.

17 And I'll point out if there is any ambiguity, the questioning included
18 ambiguities for the -- for example, Counsel asked, well, by always sending
19 the V-key, do you mean it's automatic? There was a discussion, I think, that
20 indicates Counsel maybe misunderstood the obviousness positions. But I'll
21 point out, I think, which is the most important part of this testimony -- I'm
22 on slide -- actually, I think I'm on the wrong slide.

23 I actually just lost my screen. Can Your Honors still see my slides?
24 I'm on Slide 161, starting at line 8 of the deposition transcript, Counsel
25 essentially asked Dr. Almeroth, "Is generating an agreement a prerequisite
26 for sending a virtual key?"

1 Dr. Almeroth said, "I think what I'm saying is basically what's
2 described in my declaration, which is basically a person of skill in the art
3 reading Kleve would understand that there is an embodiment where a virtual
4 key is generated after the rental agreement and always generated after the
5 rental agreement, at least in that body."

6 No ambiguity, crystal clear, absolute model of clarity, and consistent
7 with what he said in his declaration? Absolutely dead-on consistent with
8 what he said. There was no admission, and there's no inconsistency in this
9 testimony.

10 I'll move on to Slide 52. Not only do Patent Owners mischaracterize
11 the testimony, their arguments, again, they just don't make any sense. And
12 in this case, they've leaned a little heavier and given into this argument,
13 they've explained, I think, more specifically here than in the '188 patent what
14 they exactly mean by this argument.

15 And I'm reading on Slide 52, and I'm reading from POR at 44, Patent
16 Owners argue that Kleve explicitly disclosed that the temporary user may
17 agree to rental terms, italics, at the vehicle after the virtual key has been
18 distributed to the temporary user and after the virtual key is used -- the
19 temporary user has used the virtual key to access the owner's vehicle."

20 So just keep that in mind. Their point is that Dr. Almeroth is wrong,
21 and Kleve discloses that a renter would be given a virtual key to access an
22 owner's private vehicle before there's any terms in place, before there's an
23 agreement as to price, length, how much they can haul, how far they can go.
24 Ostensibly, I would guess before that renters even identify to the owner, the
25 owner would make these virtual keys available and let renters -- proposed

1 renters into the vehicle and hash things out on the screen. That makes no
2 sense. That's not what Kleve states.

3 I have the same two slides. I'm going to walk through that I walked
4 through with the '188 patent hearing. Patent Owner focuses on Figures 5 and
5 Figures 3 for this point, again, that Kleve expressly discloses sending a V-
6 key before an agreement's in place. That is the exact opposite of what Kleve
7 discloses. Kleve does say in paragraph 65 that a renter in a car can agree to
8 terms that are displayed on the screen. This is paragraph 65. It's very
9 critical.

10 Paragraph 65 is an example of applying temporary user credential
11 verification. That is an example of step 516 in paragraph 64. 516 is
12 obviously a part of Figure 5. Figure 5 of paragraph 62 expressly states that
13 this example illustrates the process after both the parties have agreed to the
14 rental agreement.

15 So Figure 5 is not an example of sending the virtual key to anyone
16 before there's an agreement. It's the exact opposite. Figure 5 expressly
17 states that all of that example occurs after the agreement's in place.

18 So there's really two ways of looking at this. The first way, Patent
19 Owner's way, we ignore that statement in paragraph 62; we have to write it
20 out of the patent, and we view this as an owner who Patent Owner argues
21 repeatedly the whole point of Kleve is to give an owner control over their
22 private vehicle. Take that as a prerequisite.

23 Why would an owner then give a virtual key to someone he doesn't
24 even know; give him access to his vehicle, and they hash out terms in the
25 vehicle? Makes no sense. It requires us to ignore portions of Kleve, or just
26 look at this in the way it's written, that that is simply an additional step, that

1 the parties agree to terms as stated in paragraph 62. And it's simply a
2 confirmation of steps -- it's a confirmation of terms in paragraph 65.

3 JUDGE BRADEN: So, Counsel, confirm for me for what you're
4 saying regarding paragraph 65 when it says and/or agree to rental terms.
5 You're saying that these are just confirmation of rental terms that were
6 already agreed to in paragraph 62, or are these additional rental terms?
7 Could you clarify, please?

8 MR. GLASS: I think -- it's the former, Your Honor. They are
9 agreeing and confirming terms -- they're agreeing and confirming to terms
10 that were already agreed to in paragraph 62. And I think that is -- I
11 understand that that said -- that paragraph doesn't say "confirming." That
12 word is not in that paragraph, but we don't throw logic and rationality out the
13 window when we're looking at prior art references. And we certainly just
14 can't ignore that explicit statement that the -- that the Figure 5 occurs after an
15 agreement is in place.

16 And I think -- I'll walk through this in a moment. There are other
17 portions of Kleve where it makes it absolutely clear that setting conditions
18 are to -- setting conditions are to enforce the rental. The rental agreement is
19 paramount, and everything flows from that rental agreement.

20 So I would suggest, Your Honors, that the only logical way to
21 interpret that, especially in light of what Kleve says at paragraph 62, is it's
22 simply a confirmation of terms.

23 JUDGE BRADEN: Okay. Thank you. I believe I understand your
24 position.

25 MR. GLASS: Thank you, Your Honor. On Slide 55, same issue. I'm
26 not going to go through this in extensive detail. Patent Owner also points to

1 Figure 3. Again, it does say that the terms can be accepted or rejected
2 through the touch screen display.

3 In this case, it states right in the same paragraph that the agreement is
4 signed through the website at step 320. It does state that in addition, the
5 agreement to rental terms and conditions can be done not only through the
6 website, it can be done through the website using smartphones or using the
7 website using other nomadic devices. The rental conditions may also be
8 displayed on the vehicle's touchscreen.

9 So again, it's the same point. We would have to adopt Patent Owner's
10 interpretation. You would have to ignore a portion of paragraph 47 and
11 adopt a conclusion that just doesn't make any sense.

12 I'll point out ultimately -- and I'm walking through this because I think
13 it is important because Patent Owners tied this to testimony of Dr. Almeroth
14 and trying to imply that he admitted he was wrong; he wasn't wrong. So
15 that's really why I'm going through this. Ultimately, it doesn't matter
16 because Figures 3 and Figures 5 are the only figures that include this
17 language of allowing a renter to accept or reject terms at the screen.

18 There's no dispute here; none. Figure 2, Figure 6, Figure 7, Figure 8,
19 Figure 9, none of them include this line. So if you agree with us that this
20 makes sense, that this is the only rational way of reading Kleve, I think that
21 is the proper conclusion, but even if Your Honors adopt Patent Owner's
22 interpretation, ultimately, it doesn't matter because there is -- there is
23 disclosure to the contract. I will move on -- I believe I'm getting close to my
24 rebuttal time. I will move on to what I think will be my last point. Again,
25 there's a lot of overlap here between what I'm going to walk through in the
26 last -- in the last hearing.

1 Patent Owner argues that step 214 is paramount, that step 214 is the
2 only place in Kleve where conditions can be set. Because step 214 occurs
3 after the virtual key is distributed in step 210; then step 210 cannot possibly
4 set conditions. Patent Owner also argues that the owner and only the owner
5 can set restrictions, and in their interpretation that is to the exclusion of the
6 rental agreement. Both of these points are incorrect.

7 As I've already pointed out, as Your Honors, as we walked through
8 this extensively at the last hearing, we walked through this extensively in the
9 briefs, Kleve expressly states that the key -- that the V-key is enabled during
10 a rental period. And that's at paragraph 49 -- 39. Excuse me.

11 JUDGE BRADEN: And Counsel, just to confirm, you are about to go
12 into your rebuttal time.

13 MR. GLASS: I'm going to chew in a few minutes of that. I may -- I
14 may take up five or ten minutes of that. Patent Owner cannot sidestep that
15 disclosure. That is express disclosure of restriction and it's associated with
16 the virtual key. I'll point out -- I'll point out that in connection with step 214,
17 I raised this earlier, Kleve does not describe ever at step 214 allowing an
18 owner to set a rental term. You can extend it. It can be terminated. But the
19 only point at which that rental term is set is in connection with issuing that
20 virtual key. That's it.

21 I'll also point out -- I may get to this if I have time. Figure 6 includes
22 no analog, none, to the owner to step 214. The only point -- that that makes
23 sense in connection with that figure that I walked through where it says that
24 it applies restrictions using the virtual key, there is no step 214. This is in
25 Figure 6.

26 There is a monitoring step. There's a monitoring where in Figure 6

1 the owner can monitor speed, location, load, but there is no step to enter
2 those restrictions. So Patent Owner is wrong that step 214 is the only place
3 where conditions can be set. In fact, it is optional. We both agree on that.
4 That's from Patent Owners. That's the POR at page 13. It's an optional step,
5 and it's not even included in all of the embodiments.

6 Figure 6 is a perfect example. Patent Owner's second point on this --
7 on this issue is that the owner and only the owner can set restrictions.
8 Again, they have the same language that they raised in the last hearing that
9 the -- that in Klevé -- this is in POR, page 9, in Klevé, the owner can enforce
10 compliance with specific restrictions whether or not such restrictions were
11 included as rental agreement terms. I think I said the same thing last time,
12 but we've been accused of including logic, common sense, into our analysis,
13 but this doesn't make any sense that in Klevé the owner can enforce
14 compliance with specific restrictions whether or not such restrictions were
15 included in the agreement.

16 Think about that. The parties get into a rental agreement, a legally
17 binding document. The renter gets to the vehicle, and the owner decides to
18 increase the price, or unilaterally decides, I only want to rent this for two
19 days instead of five. Patent Owner is arguing for an interpretation of Klevé,
20 the owner change conditions on the owner's whim. And that just makes no
21 sense. It's also not required by Klevé. The same paragraphs that we walked
22 through connection with '188.

23 In connection with Figure 2, specifically paragraph 41, Klevé states
24 that the purpose of those conditions is to enforce conditions of the rental
25 agreement. An example of controlled usage -- I'm reading from paragraph
26 41 -- may be limiting the temporary user from driving to restricted areas

1 defined by the owner based on the rental terms and conditions.

2 So, yes, the owner is defining that condition but based on the rental
3 terms. Same thing in paragraph 51. This is in connection with Figure 3;
4 controlling usage to enforce compliance with the rental agreement terms
5 may be of more importance. So when Kleve does describe the purpose of
6 setting those conditions, it is always described in connection with enforcing
7 the rental terms. It's not by whim of the -- of the owner. The owner cannot
8 set restrictions that the parties didn't agree to, and that makes sense. And
9 that's exactly what Kleve says.

10 Just a few more points I'm going to walk through. On Slide 66, Patent
11 Owner argues that, well, if the V-key -- if we could set restrictions in the V-
12 key, then step 214 would be unnecessary. Again, not true. The virtual key
13 is tied to the rental period. I said this I think now three times. I'll repeat
14 myself one more time. The virtual key -- the only time that rental term is set
15 is by virtue of creating that virtual key. In connection with step 214, it never
16 describes setting a rental term.

17 Again, it can be extended; it can be terminated, but the only point at
18 which that rental term is set is when the virtual key is created. So step 214
19 would not be rendered superfluous. Step 214 is also optional. I already
20 walked through that. And again, step 214 is not even part of Figure 6.
21 There is no analog in Figure 6 to step 214. So it's not rendered superfluous.
22 It's optional. And there are restrictions that can be set that are not mentioned
23 in connection with step 214.

24 I'll wrap up, Your Honors, with -- and bank the rest of my time. I'll
25 just make one last point on obviousness. We've argued that Kleve expressly
26 discloses the elements of the claims we also argued would be obvious. In

1 rebutting obviousness, I'll just point out -- I'm not going to walk through all
2 of their rebuttals, but they essentially raise exactly the same points.

3 They point to step 214. They say that the virtual key is sent to only
4 the vehicle. It's a repeat of exactly what they said in connection with the
5 express disclosure. I would suggest that reading -- one of ordinary skill in
6 the art reading Kleve would absolutely understand it expressly disclose the
7 elements, especially in light of the Figure 6 embodiments I walked through;
8 paragraphs 69, 71, and 72 that if not an express disclosure, that gives a
9 bright line to obviousness.

10 It explains that the virtual key is created with the facial recognition,
11 that that is sent to the renter, the renter then sends that to the vehicle. If not
12 an express disclosure, that is an absolute bright line to obviousness.

13 I will end there, unless Your Honors have any questions.

14 JUDGE BRADEN: Judge Galligan, Judge Ippolito, do you have any
15 questions?

16 I see no questions from my colleagues. So we will reserve the
17 remainder of your time for rebuttal.

18 MR. GLASS: Thank you, Your Honors.

19 JUDGE BRADEN: And just so you know, you have a little over 13
20 minutes for rebuttal.

21 MR. GLASS: Thank you.

22 JUDGE BRADEN: Patent Owner's Counsel, will you please confirm
23 that you still want ten minutes for rebuttal time?

24 MS. ENTZMINGER: Yes, please, Your Honor, ten minutes, yes,
25 please.

26 JUDGE BRADEN: Very good. And Counsel, you may begin your

1 arguments whenever you're ready.

2 MS. ENTZMINGER: Thank, Your Honor. Good morning again,
3 Your Honors.

4 I'd like to start out with rebutting a couple of points from Petitioner's
5 argument today. And that is first, that the claims at issue, the independent
6 claims, Claims 1, 11 and 18. Petitioner's Counsel is arguing that the
7 privileged settings need only be associated with the E-key, but what is
8 importantly missing from that statement is that all claims -- all independent
9 claims, require coded data, includes privilege settings associated with an E-
10 key.

11 And this is a distinction with a substantial difference between the '188
12 Claims that were argued before Your Honors here about a month ago and
13 these claims in the '659 Patent. And I'll get to some of those clear
14 distinctions, but this is key to Patent Owner's arguments in the briefs and
15 here today, Your Honors, because what Patent Owner did was take the
16 petition on its face.

17 And the petition on its face, for example, at page 20 makes clear that
18 their position is that Kleve is teaching a virtual key includes privilege
19 settings. What I heard today from Petitioner's Counsel is no, no, the
20 privilege settings need only be associated with the E-key. But the position
21 in the petition, however, was that the virtual key includes these privileged
22 settings, the virtual key as taught by Kleve. And we met that position on its
23 face, and that is what we focused on in the Patent Owner response and
24 surreply, and we'll get to it also today.

25 But the point being that neither is taught; neither coded data that
26 includes privilege settings nor any E-key, including privilege settings, is

1 ever received by a vehicle from a renter's mobile device.

2 JUDGE BRADEN: So Counsel, two questions. First of all: Given
3 the fact that you and opposing Counsel have referred repeatedly to IPR2024-
4 00981, do you agree to have the hearing transcript of that proceeding entered
5 as an exhibit into this proceeding; therefore -- because we keep hearing
6 about the other hearing. I just want to make sure that the record is clear in
7 this proceeding.

8 MS. ENTZMINGER: Absolutely, Your Honor. And I think it's
9 important to state that per the memorandum that was issued on September
10 16, 2025, by the Acting Director, the Board must issue consistent decisions
11 where similar patent claims are involved. And the -981 IPR involving the
12 '188 Patent having come over a month -- the hearing having proceeded over
13 a month before this hearing, the decision is likely to come out before this
14 decision -- final written decision. And if those two decisions in interpreting
15 Kleve are not consistent, the Board, of course, per that memorandum will
16 have to provide a detailed explanation thereof.

17 And so to that end, I do think that the '188 transcript, and specifically
18 what we relied on, and -- and Your Honors here this afternoon, is critical
19 that Kleve is interpreted consistently across similar patent claims or even
20 different patent claims. It's the same reference, and that Petitioner's
21 inconsistency be noted for this record.

22 JUDGE BRADEN: Just to be clear that the Panel will interpret Kleve
23 consistently across all cases, but just to note that the claims are different
24 between the proceedings.

25 MS. ENTZMINGER: Absolutely. And that is Patent Owner's point.
26 We'll get to that in just a moment, Your Honor. I do just want to at the

1 outset for an overview for Your Honors, turning to Patent Owner's Slide 8,
2 for all grounds, the primary reference is either Kleve or Mikan.

3 And similarly, Patent Owner has argued that the petition fails as to all
4 grounds because Petitioners failed to show that either reference, Kleve or
5 Mikan, ever teaches or suggests a temporary user in the terminology of
6 Kleve or a renter in the terminology of Mikan that their mobile device ever
7 sends any coded data that includes privilege settings to the vehicle. And
8 because that is missing as a disclosure from both primary references, there is
9 no express disclosure or teaching; moreover, you know, as the issue stated in
10 Petitioner's slides shows, the real issue is whether there is a reason to modify
11 Mikan or Kleve to have the alleged privilege settings come from the coded
12 data from the mobile device of a renter.

13 JUDGE BRADEN: So, Counsel, I just want to be clear that I
14 understand that it is Patent Owner's position that you dispute that a matrix
15 barcode is not coded data and it's not being used as a virtual E-key in Kleve
16 with the rental period being the restriction; you dispute that?

17 MS. ENTZMINGER: We dispute that the -- that any matrix barcode
18 ever includes any privilege settings, yes.

19 JUDGE BRADEN: So you dispute that the privilege setting being the
20 rental period?

21 MS. ENTZMINGER: That is their alleged privilege setting, correct.

22 JUDGE BRADEN: Okay. Thank you, Counsel.

23 MS. ENTZMINGER: And similarly as to Mikan, that the alleged
24 coded data there, the Secure ID 407 that comes from the wireless device of a
25 renter, that that is merely used to authenticate and never includes any
26 privilege settings.

1 Turning next to Patent Owner's Slide 9, I'd like to start with the
2 Kleve-based grounds and why they fail. And, I think, specifically for Kleve,
3 it's important to note that contrary to what Petitioner's Counsel stated, Patent
4 Owner is not inconsistent whatsoever. Patent Owner actually cited to patent
5 -- I'm sorry.

6 Petitioner's Counsel cited to Patent Owner's response indicating that
7 conditions -- rental conditions are never sent to the vehicle. Patent Owner's
8 response spent many pages describing why there are two distinct operations
9 in Kleve, one being the rental agreement formation and two being the
10 solution for monitoring and enforcing use restrictions and how those are set
11 by the vehicle owner.

12 And it was Patent Owner's position argued at length in the Patent
13 Owner response that the solution to set use restrictions is at 14 of Figure 2,
14 and that that solution to set use restrictions happens initially at the beginning
15 of the rental period, per Kleve paragraph 43.

16 What Patent Owner made clear in the response, however, is that the
17 rental agreement formation is separate and that those rental agreement
18 conditions don't get sent to the vehicle just by virtue of the rental agreement
19 having been formed. Instead, Kleve teaches that there is a separate solution
20 for enforcing rental agreement terms, and that is by the vehicle owner
21 actually setting those use restrictions via, for example, step 214 of Figure 2.

22 So there is no -- sorry. Go ahead, Your Honor.

23 JUDGE BRADEN: So, Counsel, if the Board -- if the Panel were to
24 find that the rental period or the start of the rental period would be a
25 restriction and find with -- looking at step 210, would that undercut Patent
26 Owner's position and how so?

1 MS. ENTZMINGER: No, Your Honor. We can look at this as
2 threefold -- a threefold argument. First, what Patent Owner argued at length
3 initially in the first ten pages of the Patent Owner's response is that there are
4 two distinct solutions as I just described in Kleve. But to the extent that
5 Petitioners are arguing that vehicle restrictions, for example, the rental
6 period, are sent to the vehicle, Petitioners are conceding that Kleve is
7 teaching those restrictions go to the vehicle, are delivered to the vehicle
8 before the temporary user arrives at the vehicle. And if the vehicle is
9 receiving the restrictions before the temporary user arrives at the vehicle, per
10 Kleve's teaching, that and per what Petitioner's Counsel is arguing, then the
11 vehicle has the ability to enforce any rental period by itself with a server
12 check --

13 JUDGE BRADEN: Counsel, let me stop you right there because that
14 was not how I understood Petitioner's argument. They -- I -- I believe that
15 they were citing both to paragraph 39 and to -- I think it was 70, paragraph
16 70 -- or I'm sorry. 69. So 39 and 69, where they said that the virtual key
17 was sent to the temporary user, that -- this is paragraph 69 of Kleve.

18 At step 616, the virtual key is generated and sent to the temporary
19 user. Kleve then goes on to state the owner may deliver a virtual key to the
20 vehicle. I believe that their argument was that the virtual key goes to the
21 temporary user and then at some point maybe the owner could send it to the
22 vehicle. How is that consistent with your argument?

23 MS. ENTZMINGER: Well, for example, in Petitioner's reply -- and
24 I'll refer Your Honors to pages 3 and 4 in Petitioner's reply. They are
25 referring to at step 604 that the server simultaneously generates a virtual key
26 and vehicle restriction. So if we look at Patent Owner Slide 20, Figure 6 is

1 to the left of this slide and step 604 is the box "generate virtual key and
2 vehicle restrictions" and the -- at step 606, the virtual key is delivered to the
3 vehicle, and the vehicle restrictions are delivered to the vehicle.

4 And Petitioners are making clear in the reply that the restrictions are
5 delivered to the vehicle at step 606. I'm quoting -- I'm quoting there, but
6 there is no comparable delivery of restrictions to the temporary user's
7 nomadic device, I will note. But in Petitioner's reply they make clear
8 afterward, when the temporary user arrives at the vehicle, then the vehicle is
9 applying vehicle restrictions. And what we have from -- and at step 616 that
10 the virtual key is generated and sent to the temporary user.

11 So we have two different virtual keys, and Figure 6 is consistent with
12 this. Figure 6 at its outset expressly refers to plural, keys, when referring to
13 the embodiment that is described in Figure 6. And what Petitioners are
14 arguing is consistent with these two keys. Figure 6, on its face, is showing
15 the vehicle owner nomadic device simultaneously -- those are Petitioner's
16 words -- simultaneously generates a virtual key and vehicle restrictions.

17 Although it's in the box "vehicle owner nomadic device," Petitioner
18 has actually stated it's the server generating those simultaneously at step
19 604. But it's at step 616 -- 614 and 616 that a virtual key is sent to the
20 temporary user. Kleve is making clear, as is shown in the box, temporary
21 user nomadic device, there are no vehicle restrictions ever received by the
22 temporary user nomadic device, and -- let alone is the temporary user
23 nomadic device ever seen sending any vehicle restrictions to the vehicle.

24 The vehicle is in the box at the center bottom of Figure 6. And what
25 we've highlighted here for Your Honors is in Figure 6 is to show that Kleve
26 is express on its face that the vehicle restrictions come via the arrow

1 highlighted between step 606 and box 622. There is no corresponding arrow
2 between box 606 -- step 606 and box 606 to the temporary user, nor is there
3 ever any indication in Figure 6 or any of the accompanying disclosures, not
4 in paragraph 69, and not any other paragraph that the temporary user mobile
5 device ever receives vehicle restrictions.

6 JUDGE BRADEN: So can you point to me where in Klevé it
7 discloses close is that there are two different virtual keys?

8 MS. ENTZMINGER: Well, for example, Your Honor, the very first
9 paragraph describing -- paragraph 69 is describing keys, plural. The
10 embodiment, quote, distributing and controlling virtual keys using a
11 nomadic device with a vehicle. And indeed the accompanying disclosures
12 refer to the generation of more than one virtual key. And this is -- this is
13 exactly what the surreply pointed out, that Petitioners are conceding there
14 are two virtual keys being generated and sent; one with vehicle restrictions,
15 according to Petitioners, and one without, and --

16 JUDGE BRADEN: And I'm sorry, Counsel. Where was that title that
17 you're referring to that says virtual keys?

18 MS. ENTZMINGER: I have -- let me up Klevé itself, Your Honor.

19 JUDGE BRADEN: Because I'm -- I don't -- maybe I'm missing that
20 in -- so I look at Figure 6, I don't see that title. I look at --

21 JUDGE GALLIGAN: I think it's the first sentence of paragraph 69 is
22 what you're referring to.

23 MS. ENTZMINGER: Yes, Your Honor. Thank you, Judge Galligan.
24 So I was reading from my notes, but I -- I'll be --

25 JUDGE BRADEN: Okay. And controlling virtual keys. Okay, thank
26 you.

1 MS. ENTZMINGER: So to clarify that is Kleve describing Figure 6
2 in total, and Petitioner's reply is consistent with these two keys. But
3 regardless, there never is any disclosure in Kleve of the temporary user ever
4 getting restrictions from -- not a server, not the vehicle owner nomadic
5 device, never getting any restrictions, let alone sending them to the vehicle.
6 And the point, Your Honors, is that -- what we were arguing at length in
7 surreply is okay, even if you disregard that there are two distinct solutions in
8 Kleve and you accept Petitioner's argument that a key, a virtual key, includes
9 privilege settings, then only the virtual key sent to the vehicle has such
10 settings.

11 JUDGE BRADEN: Okay. So I apologize for my confusion because
12 it appears, reading paragraph 69, that you're saying that only that there are
13 two different keys every time and only the vehicle gets the E-key with the
14 restrictions, that the vehicle -- the E-key sent to the temporary user does not
15 have any restrictions.

16 How am I supposed to read the fact that paragraph 69 has two
17 embodiments in there, talks about how in one embodiment you've got a
18 matrix barcode or a code word that the temporary user can use, and in
19 another exemplary embodiment, you can use, you know, these fingerprint
20 recognition photos of credit cards, et cetera?

21 Then it goes on to say at step 616, "The virtual key is generated and
22 sent to the temporary user. The owner may deliver a virtual key to the
23 vehicle."

24 How am I supposed to understand that every time you've got two
25 keys, and here even though the disclosure says that the owner may deliver it,
26 you're saying they have to because only the vehicle gets an E-key with

1 restrictions. How do I get to that?

2 MS. ENTZMINGER: Well, I apologize if I was unclear, Your Honor.
3 I did not mean to, nor do -- I think I said only or always. This is meeting
4 Figure 6 where it is. This is what Figure 6 is disclosing and referring to
5 keys, plural. I'm not intending to argue that Figure 6 is dispositive of all of
6 Kleve; however, it's rebutting Petitioner's claim that somehow Figure 6
7 supports their contention that privilege settings come from the temporary
8 user's mobile device. Kleve does not say so.

9 And Petitioner's reply. I think reading Petitioner's reply at paragraphs
10 3 -- I'm sorry, at pages 3 and 4 is consistent with two different keys. One
11 key from -- generated with vehicle restrictions and another key that is sent to
12 the temporary user nomadic device. Our position is that Figure 6 is
13 consistent with that, that there are these two distinct keys and there's
14 absolutely no teaching of a vehicle restriction coming from the temporary
15 user's nomadic device.

16 But the larger point, Your Honor, is that there is no basis for
17 modifying Kleve to teach that the temporary user's mobile device or here,
18 nomadic device, ever sends any restrictions to the vehicle because Kleve
19 teaches that A, permissively or not, the vehicle can get restrictions
20 elsewhere, and B, that there is a server check when the temporary user
21 arrives at the vehicle.

22 And that is referring to the '188 proceeding transcript at the
23 right of Patent Owner's Slide 20. You'll recall -- and this is the key
24 distinction that I was making earlier from Petitioner's Counsel's argument.
25 You'll recall that in the '188 proceeding, there was no requirement that a
26 condition of use actually be included in the key, itself. But one of the

1 independent claims said that the condition can be associated with the key.

2 Here, the coded data must include privilege settings. And Petitioners
3 at page 20 at least of the petition are making clear that it is Kleve's virtual
4 key that includes privilege settings. But if we were to turn to the '188
5 proceeding when we were here a month ago at line 15 of the transcript,
6 Counsel is saying that the condition is not included in the E-key.

7 Your Honors will recall that we were talking at length about the rental
8 period, but there the alleged condition of use was the rental period. We
9 discussed that at length. We described paragraph -- we talked about
10 paragraph 39, and I'll touch on that in a moment. But Petitioner's Counsel
11 was very clear, that was not their position stated in line 15. The condition is
12 not included in the E-key.

13 Here, by contrast, Petitioners are claiming that the privilege setting is
14 included in the E-key. That's the petition at page 20. And our point, Your
15 Honor, is to state that there is absolutely no teaching in Kleve that the
16 restriction, the alleged privilege settings are coming from the temporary
17 user's mobile device; moreover, there is no basis for modifying Kleve to
18 have the mobile device send any privilege settings because, as highlighted in
19 line 17 and 18 of the transcript in the '188 proceeding shown on Patent
20 Owner's Slide 20, Petitioner's Counsel was making clear there is a server
21 check to see if that rental period, if that key is within the rental period. And
22 this is in connection with Figure 6.

23 Also, at lines 9 through 11, Petitioner's Counsel was pointing to
24 paragraph 71 of Kleve. Quote, this is also shown in paragraph 71 where the
25 user goes up to the car, he sends a request to the server requesting access. If
26 it is in the scheduled time for rental, he's given access. This is in connection

1 with Figure 6.

2 So the point that was at least conceded by Petitioner's Counsel a
3 month and a half ago -- a month and a week ago, is that when the temporary
4 user arrives to the vehicle, there is a server check to determine whether or
5 not it is within the rental period. That is in connection with Figure 6.
6 Petitioner's Counsel was agreeing that there's absolutely no need for the
7 mobile device to send to the vehicle privilege settings, like the rental period.

8 Instead, the server is performing a server check to see if it is within
9 that rental period. And that position should apply -- that is not just an
10 argument. That is an interpretation of Kleve by Petitioners, and that that
11 interpretation of Kleve cannot be different merely because we're talking
12 about different patent claims now.

13 So just to contrast, for example, Your Honor, if we look at Patent
14 Owner's Slide 21 to look at the reply that was filed in this matter, now
15 they're saying the virtual key and its associated coded data includes or would
16 have been obvious to include, include, at least the rental period. So that
17 access to vehicle is limited to, quote, a given rental period. That's
18 highlighted from page 3 of the reply.

19 And we go on to describe what I had referred to earlier regarding
20 Petitioner's characterization of Figure 6 and the two keys that are generated.
21 But the point being that these are two distinct positions. Petitioners now are
22 claiming that, oh, the rental period is included in the key, and the virtual key
23 is, itself, coded data that is sent from the temporary user's mobile device, but
24 only referring back to Patent Owner's Slide 20, only a month and a week
25 ago, Petitioner's position was that the condition is not included in the E-key
26 but is merely associated with it.

1 JUDGE BRADEN: So Counsel, how do we read the fact that Kleve
2 appears to have multiple embodiments and uses the word "may"? Because if
3 you look at paragraph 70, it talks about one method, may include having the
4 temporary user scan their finger. The temporary user's virtual key may be
5 authorized in several ways, including but not limited to.

6 So how do we read the fact that Kleve seems to have multiple ways of
7 doing these things, and depending on the claims, that appears to have
8 influenced the arguments, or maybe that's what these arguments are based
9 on.

10 How do we not read the fact that Kleve has multiple permissible ways
11 of doing things?

12 MS. ENTZMINGER: Well, under no permissible way -- zero
13 permissible ways is Kleve teaching that the temporary user's mobile device
14 ever sends privilege settings to the vehicle. There aren't any. Petitioners
15 now -- not in the reply, but now -- are relying on Figure 6 to pretend there is
16 some express disclosure. Now, are relying on paragraph 39 of Kleve to
17 pretend there is an express disclosure. There isn't any.

18 And I would in a moment just like to highlight what we all focused on
19 from paragraph 9, in a moment, of Kleve. But to answer Your Honor's
20 question, the permissiveness doesn't change at all, Patent Owner's argument,
21 because there is no express disclosure in any of these permissive suggestions
22 of this could happen or that could happen.

23 But to the second point about whether there is any basis for modifying
24 Kleve as Petitioners state, those permissive suggestions of Kleve, you can do
25 this and you can do this, are obviously undermining Petitioner's argument
26 that a POSITA would have modified Kleve to have the temporary user their

1 mobile device send coded data with privileged settings to the vehicle
2 because one there's at least one characterization or permissive statement in
3 Kleve that the vehicle gets vehicle restrictions separately and that the
4 vehicle's VCS, the vehicle computer system, can itself enforce any such
5 restriction.

6 But number two, that as Petitioner's Counsel stated in the '188
7 hearing, that there is this server check when the when the temporary user
8 arrives at the vehicle. Again, permissive or not, it doesn't matter. Kleve is
9 teaching two different ways in which the rental period can be enforced that
10 do not at all involve the temporary user's mobile device sending any such
11 restriction like a rental period to the vehicle.

12 And, in fact, Dr. Almeroth, Petitioner's expert who is stating, oh, the
13 reason why Kleve should be modified to have the temporary user send this
14 as coded data, the rental period or restrictions in general is to render the
15 system more secure, less vulnerable to tampering by the temporary user, and
16 less vulnerable to circumventing restrictions by the temporary user.

17 But this statement -- this opinion actually highlights why the
18 modification would never be made. And Dr. Malek, our expert, opined that
19 no POSITA would have reason to make such a modification because you
20 have rendered the system more vulnerable to the temporary user
21 circumventing the restrictions. If you send the restrictions to the temporary
22 user's mobile device and you have the temporary user's mobile device send
23 them to the vehicle, you've rendered the system less secure, more vulnerable
24 to tampering, more vulnerable to circumventing restrictions. The point
25 being, you can't tamper with it if you don't have it. The temporary user
26 never gets any vehicle restrictions like the rental period; and therefore, it's

1 less likely that they're going to tamper with what they don't have. So, for
2 those three reasons, the modification itself is undermined by these teachings
3 of Kleve, whether permissive or not.

4 But Your Honor had touched upon paragraph 39, and I would like to -
5 - let's see if I have -- so turning to Patent Owner's Slide 39, for example, at
6 right is a reproduction of Kleve, paragraph 39, Your Honors will, I'm sure,
7 recall the last sentence of paragraph 39, which we had all discussed at length
8 at the last hearing. And Petitioner's position was that this sentence indicates
9 that a given rental period is associated with the E-key that is sent to the
10 vehicle. And that is an important distinction, Your Honors, because the last
11 sentence, whether permissive or not, is referring to a virtual key sent to the
12 vehicle, configuring the VCS, the vehicle computing system, to enable the
13 keyless drive system for the appropriate temporary user during a given rental
14 period.

15 By contrast, again, permissive or not, the virtual key sent to -- that
16 may be sent to the website for the temporary user to view, sent through an e-
17 mail sent to the temporary user's nomadic device, there is absolutely no
18 indication, as there is in the last sentence, and as was relied upon by
19 Petitioners in their reply, that it is enabling the keyless drive system during a
20 given rental period that that virtual key sent to the temporary user has any
21 such restriction.

22 The language is different in kind and must be viewed for what it is,
23 that that is purposeful and that's similar to what was discussed regarding
24 Figure 6, that Kleve has a distinction in keys between what is sent to the
25 vehicle -- again, permissive or not, doesn't matter -- and what is sent to the
26 temporary user. And again, this makes sense because as Petitioner's Counsel

1 brought up, Kleve is very clear that it puts the discretion and control in the
2 hands of the vehicle owner to set restrictions and update those restrictions.

3 But here, Petitioners are making clear that the virtual key includes the
4 alleged restriction. And if that is correct, then you would need to have the
5 vehicle owner and the server redistribute a virtual key to the temporary user
6 if it has to update a rental period.

7 Instead, Kleve's solution requires no such redistribution of keys when
8 updating a rental period. There is no such teaching. It says that the owner
9 can update end-time restrictions and that that is communicated back to the
10 vehicle's VCS, Vehicle Computing System. There is zero indication from
11 Kleve that the restriction is ever updated -- well, never sent in the first place
12 to the temporary user's nomadic device or mobile device, nor would there be
13 any updating of that key.

14 And if I turn back to -- turn back to -- we've looked at each of these on
15 different slides. This is Patent Owner's Slide 18. We've looked at paragraph
16 39, and we've looked at this excerpt from the transcript of the '188
17 proceeding. But I think it's important to show how the two are both
18 consistent with each other. And this makes sense, and is to be read
19 consistently with the prior argument of what Kleve teaches from the '188
20 proceeding.

21 If the virtual key, as Petitioners argue, the virtual key from -- that is
22 described in the last sentence of paragraph 39 that that virtual key sent to the
23 vehicle, configuring the vehicle computing system, to enable a keyless drive
24 system for the appropriate temporary user during a given rental period.

25 Again, their position was not that the virtual key included the rental
26 period. That's at line 15 of the transcript. The condition is not included in

1 the E-key. That was not their position, but rather that it was associated with
2 the E-key. But regardless, their position now is that the privilege setting is
3 included in the E-key. But regardless, we have two distinct operations that
4 obviate the need for any temporary user's mobile device to ever send a rental
5 period, and that is A, that the VCS can be configured to enable a keyless
6 drive system during a given rental period. That is paragraph 39.

7 JUDGE BRADEN: But, Counsel, so help me understand this, on
8 paragraph 39, when it says the system may generate a virtual key, and then it
9 goes on to say the virtual key may be sent, you know, to the temporary user.
10 The virtual key may also be sent to the vehicle.

11 How do I not read that you have a virtual key that's created and then a
12 copy is sent -- the virtual key is sent to the temporary user and a copy, the
13 virtual key, is sent to the vehicle. And the reason why it has different
14 language here is because the vehicle has the VCS and a temporary user, a
15 person, doesn't have a VCS. How do I read this, then, as two different keys?

16 MS. ENTZMINGER: Well, one, because Petitioners argue that there
17 are two different keys at Reply 3/4 when they're describing Figure 6. And,
18 number two, it isn't saying a copy; it's referring to the -- referring to a virtual
19 key that may -- I mean, as Petitioner's Counsel made clear, this is not one
20 that is sent to both. According to Petitioner's Counsel, these are each
21 permissive. Neither is required.

22 And there is no indication that there is only one. Likewise, for
23 example, paragraph 69, pointed to by Petitioners, makes clear that we're
24 talking about keys plural. But I'm making the point that the relied upon
25 sentence is saying that this virtual key is configuring the VCS to enable the
26 keyless drive system for a given rental period.

1 Petitioner's Counsel, last time, was making clear, oh, that means that
2 it's associated with the virtual key. Well, regardless of whether it's one key
3 or two, that's still -- "associated with" is not included in. And the petition, at
4 page 20, made clear that their position is that Kleve is teaching that a virtual
5 key includes privilege settings. And that was not their position in the '188
6 proceeding. At line 15, for example, there is no condition included in the E-
7 key.

8 JUDGE GALLIGAN: Counsel, so I just wanted to clarify. So your
9 position, I think I understood it, is that if there -- I'm looking at the last
10 sentence of paragraph 39 there. I'm just trying to formulate this right,
11 because I want Petitioner to respond to this point.

12 If there is a rental period that is enforced, you know, at the moment
13 that the user enters the car, for instance, that rental period was delivered to
14 the VCS via a virtual key?

15 MS. ENTZMINGER: Well, I guess I would answer Your Honor's
16 question twofold. Our argument was that there are two distinct solutions.
17 But even if accepting their argument that it is sent with the virtual key, it is
18 either sent to the vehicle via the server or via the vehicle owner's nomadic
19 device. That is, at best, what Kleve is teaching, and there is no comparable
20 teaching that it comes somehow from the temporary user's nomadic device.

21 JUDGE GALLIGAN: Okay. And that's because of the wording in
22 paragraph 39 saying that it's the virtual key that's sent to the vehicle that
23 enables the appropriate rental period conformance. Is that right? Because it
24 specifically says to enable the keyless driving system for the appropriate
25 time. So it's because it's that virtual key that's sent to the VCS?

26 (Simultaneous speaking.)

1 JUDGE GALLIGAN: Well, and I'm asking only because I was
2 wondering if there's other disclosure in Kleve about this particular virtual
3 key that's sent to the VCS, assuming there's different kinds or whatever, is
4 the one that enables the rental period restriction. That's all. That's why I
5 was curious.

6 MS. ENTZMINGER: Well, I hope this answers Your Honor's
7 question. To the right, I mean, the statement by Petitioner's Counsel at line
8 15 is that the condition is not included in the E-key. So, somehow, the
9 argument was that -- somehow that paragraph 39, by the last sentence, that
10 the virtual key is somehow associated with the rental period and the virtual
11 key is sent to the vehicle configuring the VCS.

12 But, whether or not associated with it, there is no coded data coming
13 from the temporary user's nomadic device, mobile device, that has any
14 restriction that includes any privilege setting. And it's both because what
15 was pointed to and relied on in paragraph 39 doesn't get you there. It doesn't
16 say anything that there is a distinction in kind between the two sentences.
17 But also because at, let's see, paragraph 69, and turning back to Patent
18 Owner's Slide 20, Figure 6, is indeed talking about the vehicle restrictions
19 coming directly from the vehicle owner's nomadic device.

20 So Kleve is teaching that the vehicle can receive vehicle restrictions in
21 at least two ways: one by the server, and that's, for example, at paragraph 63,
22 also relied upon by Petitioners, but that's also directly from the vehicle
23 owner nomadic device. So we can get -- Kleve is saying you can get -- the
24 vehicle can get it in two ways.

25 And Petitioners are conceding in their reply, for example, at pages 3,
26 4, and 6, that by the time the temporary user arrives at the vehicle, the

1 vehicle already has the restrictions. So Patent Owner's position is it doesn't
2 matter whether the vehicle got those restrictions from the server or from the
3 vehicle owner's nomadic device. It already has the restrictions that
4 paragraph 39 is saying it can, through configuration of the VCS, enforce a
5 rental period.

6 So there are at least those two possibilities. But then there's also what
7 Petitioner's Counsel has said here in the '188 proceeding, at right on this
8 slide, which is, even apart from the vehicle itself, the VCS enforcing that
9 rental period, there's a server check. Because the vehicle is in
10 communication with the server, there's a server check to see if that rental
11 period -- if that key is within that rental period. And those are Petitioner's
12 words. That's Petitioner's interpretation of Kleve.

13 And I think it's also worth noting that the Petitioner's reply, at page 4,
14 also noted that the enforcement of the rental period begins before step 704.
15 And this is yet another embodiment of Kleve. But whether it's permissive
16 and whether it's an embodiment that may or may not be used all the time, or
17 only this embodiment, it's Kleve teaching yet another way, conceded by
18 Petitioner's Counsel, of enforcing the rental period before the temporary user
19 even attempts to use their -- their mobile device as an E-key.

20 I think it's also helpful to look at -- so, for example, this is Patent
21 Owner's Slide 17. And at -- well, I think I went over this. In the '659 reply,
22 Petitioners have argued that the virtual key and its coded data includes the
23 privilege settings. Petitioner's argument here today was more about
24 associating and that there is no inconsistency with the '188 proceeding. But
25 that is not the fact given, taking the petition at its face, at page 20, and what
26 was relied upon by Kleve as coded data including privilege settings. They

1 pointed to the virtual key.

2 JUDGE BRADEN: Counsel, I wanted to let you know that you now
3 have five minutes before you go into your rebuttal time.

4 MS. ENTZMINGER: Thank you, Your Honor. I will actually just try
5 to wrap up this Kleve discussion, and then turn to a couple more points on
6 the dependent claims.

7 Regarding Figure 5, this, too, is showing that, one, there is only one
8 particular -- let's see, maybe it's easier to go to Patent Owner's slides. Yeah.
9 Patent Owner's Slide 37. And, in the petition, Petitioner's had relied upon
10 paragraph 63 as Kleve teaching a virtual key that is sent as an encrypted
11 message and that this is alleged coded data. But paragraph 63 and Figure 5
12 and its accompanying disclosures make clear that this is a unilateral
13 direction of data from the server to the temporary user's phone 518, not from
14 the temporary user's mobile phone. And nor is there any arrow in Figure 5
15 suggesting that any data is coming from the temporary user's phone.

16 And if I may, regarding -- I think Mikan is fairly clear that the --
17 turning to Patent Owner's Slide 47, Mikan is clear that vehicle operation
18 policies, the alleged privilege settings, are only ever stored on the master
19 database and the local database of the vehicle. There is no teaching or
20 suggestion that the wireless device of the renter ever includes, let alone
21 sends, any privilege settings.

22 What was pointed to as coded data is, on the right-hand side of Patent
23 Owner's Slide 47, is secure ID 407. And that is from Figure 4 of Mikan.
24 And secure ID 407, Mikan makes clear that that is only used for
25 authentication purposes, that that does a challenge authentication handshake
26 with the secure ID check 315, highlighted in orange, that is on the local

1 database of the vehicle. This is how Mikan is identifying the wireless device
2 as an authenticated E-key.

3 But there is absolutely no suggestion that either in, with, or from any
4 part, let alone the secure ID 407 of the wireless device, that there's a
5 transmission of any privilege settings, what Petitioners point to as the
6 vehicle operation policies. Mikan is very clear that -- that before the E-key
7 is even used, the wireless device even comes into contact with the vehicle,
8 that the vehicle will do a synchronization operation with the master database
9 to make sure the records are synced up. And that includes any vehicle
10 operation policies that are associated with any keys for that vehicle, so that
11 when the user comes into contact or tries to use the E-key with the vehicle
12 after the authentication is performed, there is no need for the vehicle to
13 actually get any vehicle operation policy from the phone itself.

14 Instead, it retrieves -- Mikan is teaching that the vehicle retrieves
15 those records locally, from the local database stored to the vehicle. And
16 similar to why the Kleve-based grounds fail, there's no reason to modify
17 Mikan to teach that the wireless device would somehow send any alleged
18 privilege settings, the vehicle operation policies. Where, again, Dr.
19 Almeroth, Petitioner's expert, is making clear that, you know, one goal a
20 POSITA would have is to render the system more secure, less vulnerable to
21 tampering, and less vulnerable to the user circumventing any restrictions,
22 any vehicle operation policies in this case.

23 But what is left unrebutted by Petitioners is Patent Owner's expert
24 making clear that, well, a POSITA would not make such a modification
25 because Mikan is already more secure and less vulnerable to tampering by
26 the renter, less vulnerable to them circumventing restrictions, because, again,

1 like Kleve, if the renter never receives those vehicle operation policies, then
2 they're not likely to tamper with them or circumvent them. It's a more
3 secure system if the vehicle itself is retrieving them from the local database.

4 And turning to a couple of the dependent claims, Claim 6, both for
5 Mikan and Kleve, the Petitioners failed in their burden to show obviousness
6 here. For example, starting with Kleve, so, as Patent Owner argued at length
7 in the Patent Owner response, Kleve is actually making clear that the sole
8 discretion and control is in the hands of the vehicle owner. And Kleve is
9 actually discouraging the sharing of a virtual key with another recipient, and
10 actually requires -- for example, Patent Owner's Slide 62 -- unique
11 identification from the temporary user, like a biometric scan, a fingerprint
12 scan, a credit card, a driver's license.

13 And Petitioners have neither explained, nor provided the rationale of a
14 POSITA, why Kleve would be modified to somehow share this unique
15 identification with another recipient. And Mikan, likewise, is only teaching
16 one secure ID 407 per wireless device. There's no explanation or rationale
17 for modifying Mikan to somehow share that wireless device unique secure
18 identifier with another user. So Claim 6 must be upheld.

19 And as for Claims 12, 13, and 20, as argued in Patent Owner's
20 response, the Petitioners failed to show -- just failed to meet their threshold
21 burden as to these claims. At most, they're arguing that a server may be
22 associated with a manufacturer of the vehicle, but that is not getting to their
23 burden of showing that it is associated with a manufacturer of a vehicle.
24 And, for the reason stated in the brief, the printed matter doctrine also fails.

25 So, with that, unless Your Honors have any more questions for me, I'll
26 reserve the remainder of my time.

1 JUDGE BRADEN: Very good. And you have six minutes left.

2 MS. ENTZMINGER: Thank you, Your Honor.

3 JUDGE BRADEN: Petitioner's Counsel, you may begin your
4 argument when ready. And you have just over 13 minutes left in your
5 rebuttal time.

6 MR. GLASS: I just have very few short points. I'll start with this
7 notion of permissive versus disclosure in Kleve. Patent Owners argued --
8 I'm reading from their surreply, bottom of page 2 -- Patent Owners argue, at
9 best, Petitioner offers a basis -- offers a basis for sending the rental period
10 with a virtual key to the vehicle from the server following agreement. So
11 they're conceding that we've offered a basis to include the rental period in
12 association with a virtual key to the vehicle. They go on to argue,
13 repeatedly, that we've offered no basis or rationale for why that virtual key
14 would be -- that restriction would be included in the information sent to the
15 renter. I gave chapter and verse on that in my presentation.

16 Figure 3 only discloses sending the E-key to the renter. Patent Owner
17 did not address that whatsoever. I went through paragraph 69, 71, 72. That
18 is an express disclosure of exactly what Patent Owner said is missing from
19 Kleve. Not a word on that. Paragraph 31 expressly states -- paragraphs 8
20 and 9 all state very clearly, not that the information is sent to the vehicle; it
21 is sent from the server, through the renter's mobile device, to the vehicle.
22 Not a word on that from Patent Owner.

23 So they've conceded in their surreply, at page 2, that we have provided
24 a basis for sending that information to the vehicle. They're wrong on the
25 points that we never argued or there was no disclosure in Kleve of sending
26 the information to just the renter. So we have absolutely -- Kleve absolutely

1 expressly discloses exactly what they say is missing from Kleve.

2 JUDGE BRADEN: What is -- how do you explain their argument,
3 then, regarding paragraph 39 and 69 where Patent Owner argues that there's
4 actually two different E-keys, one sent to the user that has no restrictions and
5 a different one sent to the vehicle which can enable the drive system for the
6 given rental period, and appears to support their argument that this is why,
7 actually, when you update the rental period, you don't have to update the
8 user's E-keys, because the rental period is a restriction that's updated at the
9 vehicle and not the user's E-key.

10 MR. GLASS: Again, I'll -- thank you, Your Honor, for pointing me to
11 that argument. I was going to hit that next. If you listen to what Patent
12 Owner said, they tie that -- this notion that there are two different E-keys, or
13 two different types of E-keys, or multiple E-keys, that's nowhere in Kleve.
14 Kleve never states that. They tie that to an alleged admission -- I'm not
15 going to -- I don't have time to walk through it. They tie that to an alleged
16 admission we made in the reply at 3, 4, and 5. I walked through that. We
17 made no such admission.

18 The only thing, when Your Honors pressed Counsel on that question,
19 Counsel pointed to paragraph 69, and because it uses the word keys, plural,
20 that there must be different keys. That only means that there are more than
21 one renter. So this is an owner that's renting the vehicle to multiple renters
22 at different times. So it generates keys for it. There is no statement
23 anywhere in Kleve that different keys are sent to different to -- different keys
24 are sent out from the server.

25 And to your point, Your Honor, you made the point as I was writing
26 this down, in paragraph 65 -- excuse me, in 39, it states that a key is

1 generated and the key is -- the key is sent to the user and the key is sent to
2 the vehicle. So it's the same key. There is no disclosure in Klevé that
3 different keys are sent to different entities.

4 And, again, I'll get back to the point that Klevé is permissive, on
5 Figure 6, that the key is sent to the vehicle. It does not have to be. Patent
6 Owners completely misrepresent what we said and what we argued and what
7 Klevé states. Klevé states that the E-key is, in Figure 6, is sent to the vehicle
8 -- it is sent to the owner -- I'll get it right this time. It is sent to the renter,
9 and it may be sent to the vehicle.

10 In that embodiment, once the V-key and the restrictions are generated,
11 the only place they can get to the vehicle through is from the renter. Full
12 stop. There is no disclosure in Klevé, in Figure 6, of the owner setting
13 restrictions in any other way in Figure 6.

14 Does that answer your question, Your Honor?

15 JUDGE BRADEN: I believe I understand your position. Thank you,
16 Counselor.

17 MR. GLASS: With respect to -- Patent Owner also misrepresents our
18 position that we only argue that the restriction is in the key. That's not what
19 these claims require. These claims require -- and I was very careful when I -
20 - or I tried to be careful when I said this, that the renter's device sends coded
21 data that includes restriction settings associated with a virtual key. That's
22 exactly what we said in the petition.

23 Yes, we said at one point, I think -- there is a point where we said that
24 it could be included with the key. We said, at page 21, that it's associated
25 with the key. We said at multiple other portions and connections with the
26 claim, page 19, page 28, that is associated with the V-key.

1 JUDGE BRADEN: I believe Patent Owner made the argument that in
2 the other IPR2024-00918 case, you made the argument -- or, sorry,
3 Petitioner's Counsel made the argument that the restriction was coded data
4 with the E-key -- was the E-key. And, here, you're making the argument
5 that it's merely associated with the E-key; and therefore, there's an
6 inconsistency. Will you address that, please?

7 MR. GLASS: If I may, I think it is slightly different. I believe Patent
8 Owner's argument is that -- I have Judge Galligan's question on the screen.
9 This is at page 40 of the transcript from the last hearing, lines 22 through 26.

10 The claims in the '188 require that the restrictions be associated with
11 the E-key. And, at the last hearing, Judge Galligan asked Counsel whether -
12 - does it have to be included in the E-key? Is it enough that you could just
13 do, basically, a server check and then check to see that the restrictions are
14 associated with the E-key? And for the '188, that is sufficient. The '188
15 does not require that the restrictions be included in the E-key.

16 Now, my points -- and that was on 63. I'm sorry. My point on Slide
17 63, if I ever get there, is simply that I was responding specifically to Judge
18 Galligan's question, is it sufficient for the claims of the '188 that you do this
19 server check? Does it have to be included in the key?

20 And I said, no, because if you look at paragraph 71, there's a server
21 check, and that would meet the claims of the '188. And I'll point out, very
22 critically, as Your Honor pointed to, paragraph 71 is permissive. It states
23 that, at step 618, the temporary user may send the virtual key to the server
24 requesting access. So this is yet another permissive alternative disclosure in
25 Kleve. There's no inconsistency. Kleve teaches both.

26 I walked through explicit -- I spent, I think, 15 minutes of my opening

1 walking through the explicit disclosures of the facial recognition, paragraph
2 31, paragraphs 8 and 9, Kleve, paragraph 6, where the coded data includes
3 restrictions that are associated with the V-key. In the '188, that wasn't
4 required. But Kleve teaches both, and that's the point. And there is no
5 inconsistency.

6 On Patent Owner's point that's -- that by virtue of somehow including
7 all of this permissive details, that would lead someone away -- one of
8 ordinary skill in the art away from the combination, that's absolutely
9 contrary to law. We cited a case, page 21 of our reply, to the effect that
10 including multiple embodiments does not dissuade someone from the
11 combination. We all know this. We take a reference for all that it discloses.
12 Patent Owner repeatedly is urging Your Honors to ignore any disclosure that
13 doesn't comport with their view of Kleve.

14 Kleve is a very robust disclosure. It happens to have a lot of
15 alternative embodiments. Some of those map very cleanly onto the '188.
16 Some of them map very cleanly onto this patent. There is no inconsistency.

17 JUDGE GALLIGAN: Counsel, can I just ask you about paragraph
18 39, and I know this was a big point of your case in the last -- in the '981 case
19 was this last sentence of paragraph 39 of Kleve. The virtual key may also be
20 sent to the vehicle, configuring the VCS to enable the keyless drive system
21 for the appropriate temporary user during a given rental period.

22 And I think, in that case, your position was that the rental period is the
23 restriction; therefore, it was sent or set before the -- you know, the E-key is
24 distributed. In this case, I understood Patent Owner's Counsel to be saying,
25 look, if you take Petitioner at its word that you're checking compliance with
26 the rental period, and the beginning of the rental period is the -- in the claim,

1 it says there's -- the coded data enables functions of the E-key for unlocking
2 and use of the vehicle. I think your position -- the Petitioner's position is
3 that's the rental period. That's the beginning of the rental period.

4 And how do you respond with this saying, well, if you are going to do
5 that, the way you do it, according to Kleve, is that you download that
6 information to the car itself; therefore, the car itself has it, and it's not sent
7 from the mobile device?

8 MR. GLASS: Again, it is -- it's exactly what I walked through in the
9 opening. That is one way Kleve disposes of doing it. One way. In
10 connection with Figure 2, and that's what I have on the screen -- I don't have
11 it on the screen. Paragraph 39, in connection with Figure 2, that V-key may
12 be sent to the user. It may be sent to the vehicle. In Figure 3, it is only --
13 only -- sent to the user. So, because that virtual key is enabled for the given
14 rental period, it's the same exact position we had in the '188, that that is a
15 restriction on use. You could -- Kleve does disclose that you can download
16 it to the vehicle. But it also gives an express disclosure of that V-key being
17 sent only to the user, and that that key is the same key throughout. It is
18 enabled during the rental period.

19 JUDGE GALLIGAN: And then, in that situation, because here
20 obviously the car, the VCS of the car, knows the rental period. So it can say,
21 okay, this is the starting rental period. Does Kleve speak to the situation in
22 which only the mobile device has this key and the mobile device comes up
23 to the car and attempts access, for instance? How does that work in Kleve, if
24 Kleve doesn't know how -- doesn't have the E-key with any restrictions on
25 it?

26 MR. GLASS: I mean, I -- so, the VCS wouldn't necessarily have the

1 key. And the hypothetical is the V-key has the restrictions and how would
2 the car know? Well, there, it's exactly what's stated in Figure 6, that when
3 the owner -- it's in step 622. It states very clearly: use the virtual key to
4 enter and start the vehicle.

5 So the owner walks up with the -- the renter walks up with the V-key.
6 The vehicle uses that V-key to enter and start the vehicle. And because that
7 coded information includes the rental period, that is used to apply the vehicle
8 restrictions. So, even in Figure 6, when we don't send the V-key to the
9 vehicle, it simply uses the virtual key from the renter.

10 JUDGE BRADEN: So how does that comport with Petitioner's reply,
11 on page 4, describing Figure 7, where it talks about at step 702, the VCS
12 begins monitoring and reports usage, it waits for the rental period to start
13 step 704. And then Petitioner states, thus, enforcement of the rental period
14 begins before step 704. I believe Patent Owner argued that this shows
15 vehicle enforcement rental period happens before the user ever even gets the
16 E-key; and therefore, that undermines Petitioner's position. What say you?

17 MR. GLASS: I think that the point that we were making is, again,
18 that the V-key has to be enabled for that rental period. So, you can't go up to
19 a car before the rental period begins and attempt to use it. And that's -- and
20 that was the point I made, I think it was paragraph 43 in connection with
21 Figure 2, that that V-key and some embodiments can enable a renter to gain
22 access to the vehicle and drive away by itself.

23 So, yes, there are mechanisms in Kleve, additional authentication,
24 pass phrases, that confirm at the vehicle the renter's usage. But there are
25 also embodiments where that V-key and that V-key alone will give the
26 renter access to keyless drive-away.

1 And I believe I'm out of time. I want to make sure I answered Your
2 Honors' questions. If not --

3 JUDGE BRADEN: Do you have any other questions?

4 Judge Ippolito, do you have any questions?

5 JUDGE IPPOLITO: I do not.

6 JUDGE BRADEN: Very good. Thank you very much, Counselor.

7 Petitioner's Counselor, you may begin your argument when ready.

8 And you have six minutes left of your rebuttal time.

9 (Pause.)

10 MS. ENTZMINGER: Thank you, Your Honors. So, just to rebut a
11 couple of points. I don't want to belabor the '188 transcript, but Petitioner's
12 Counsel seems to keep trying to cabin Petitioner's argument in the '188
13 proceeding as somehow limited to a very specific question by Judge
14 Galligan. And the transcript speaks for itself that their position was that the
15 condition is not included in the virtual key of Kleve.

16 And, instead, Petitioners argued that it is when the temporary user
17 arrives at the vehicle, the vehicle is in communication with the server, and
18 that vehicle can perform a server check -- those were the words of
19 Petitioner's Counsel, "a server check" -- to ensure that the key is within the
20 rental period.

21 This is one means. Again, permissive, fine, doesn't matter. One
22 means that Kleve is teaching by which enforcement of the rental period can
23 be performed without the temporary user's mobile device ever needing to
24 send any restriction to the vehicle, let alone as coded data.

25 So, that admission is critical for the proceeding before Your Honors
26 today. And in that transcript, Petitioner's Counsel had referred to,

1 specifically, paragraph 71 of Kleve as supporting that interpretation. And I
2 think it's important to point out -- trying to recall back to Figure 6, there are
3 the four boxes. On the left is the vehicle owner's nomadic device, and there
4 is the generating a virtual key and vehicle restrictions from the vehicle
5 owner's nomadic device. There's a server in the middle, and there's the
6 temporary user's nomadic device. And at the bottom of Figure 6 is the
7 vehicle itself and steps that happen within the vehicle.

8 And specifically regarding step 618, Petitioner's Counsel had argued
9 that paragraph 71, describing 618, supports this interpretation of Kleve put
10 forth at the '188 hearing. That is, that the temporary user, when arriving at
11 the vehicle to use their mobile device as an E-key, the vehicle performs a
12 server check to ensure the key is within the rental period.

13 And if we look at paragraph 71 of Kleve, this is Exhibit 1005 of the
14 petition. At the bottom of the screen here, paragraph 71 of the patent
15 application, this is describing step 618. The temporary user may send the
16 virtual key to the server requesting access to the vehicle or use a vehicle
17 input device, like camera, microphone, fingerprint scanner, or retinal scanner
18 integrated with the VCS to capture his identity and/or payment credentials to
19 enable a keyless drive-away.

20 This is in reference to the virtual key that is sent to the temporary
21 user. And referring to this next sentence, I think this is key in rebutting
22 Petitioner's points, that we are talking about -- and Petitioner's reply bears
23 this out -- that Figure 6 is talking about multiple keys.

24 Quote, if it is within -- sorry, if it is the scheduled time for the rental,
25 the vehicle may compare the identity credentials just inputted at the vehicle
26 and the one previously sent virtual key to the vehicle from the vehicle owner

1 to determine authorization. This is referring to the temporary -- sorry, the
2 vehicle owner's nomadic device having sent a virtual key to the -- I'll just
3 pull it up here.

4 Referring to Patent Owner's Slide 20, Figure 6, on the left side of
5 Figure 6, the vehicle owner's nomadic device has a virtual key and vehicle
6 restrictions. And it is at step 606 that those vehicle restrictions and that
7 virtual key are delivered to the vehicle. And, instead, there is -- Kleve is
8 showing a different virtual key and no mention of any vehicle restrictions. It
9 doesn't say, "and vehicle restrictions." It doesn't say, "with vehicle
10 restrictions." And nothing in the accompanying disclosures of Figure 6 at all
11 suggests any restrictions ever having been received from the temporary
12 user's mobile device, nor sent by the temporary user's mobile device to the
13 vehicle.

14 And as Your Honor, Judge Braden, had brought up regarding the
15 Petitioner's reply, with respect to Figure 7, Petitioners had argued that
16 enforcement of the vehicle actually begins before step 704. And our point
17 was that by Petitioner's argument, both with respect to pages 3, 4, and 6,
18 regarding Figure 6, as well as their argument regarding Figure 7 of Kleve,
19 Petitioner's Counsel makes clear that their interpretation of Kleve is that the
20 enforcement begins at the vehicle before the temporary user ever uses their
21 key.

22 And so just to put a fine point on Your Honor's question to Petitioner's
23 Counsel in rebuttal, I think Your Honor had put it that it's before the
24 temporary user receives their key. But, to be clear, actually, based on the
25 steps as articulated in Kleve regarding Figure 7, and with respect to
26 Petitioner's reply interpreting Figure 7, it's actually before the temporary

1 user arrives at the vehicle, not before the key is distributed to the temporary
2 user.

3 But the point remains for Patent Owner's argument that if the
4 enforcement begins before the temporary user ever arrives at the vehicle,
5 then there are at least two ways Kleve is teaching -- again, permissive or not;
6 irrelevant -- two ways Kleve is teaching to enforce the rental period: by the
7 vehicle itself or by the server check that Petitioner's Counsel argued was
8 happening when the temporary user arrives at the vehicle, rendering
9 absolutely unnecessary and, in fact, undesirable the modifications that are
10 proposed by Petitioners to have the temporary user send that rental period to
11 the vehicle.

12 JUDGE BRADEN: Thank you for that clarification, Counsel.

13 MS. ENTZMINGER: And if Your Honors have any further questions
14 for me, I'd be happy to answer them. If not, I thank you all for your time.

15 JUDGE BRADEN: Well, one question.

16 MS. ENTZMINGER: Yes.

17 JUDGE BRADEN: You previously agreed about having the '981
18 transcript entered as an exhibit in two this proceeding. Do you agree to have
19 the transcript from this proceeding entered into the '981 patent proceeding?

20 MS. ENTZMINGER: Yes, Your Honor.

21 JUDGE BRADEN: Thank you very much.

22 Judge Galligan, do you have any more questions for Patent Owners?

23 JUDGE GALLIGAN: No.

24 JUDGE BRADEN: Judge Ippolito, do you have any more questions
25 for Patent Owner's Counsel?

26 JUDGE IPPOLITO: None for me.

1 JUDGE BRADEN: Very good. Thank you. And, Petitioner's
2 Counsel, do you agree to have the transcript from this proceeding entered
3 into the '981 proceeding?

4 MR. GLASS: No objection, Your Honor.

5 JUDGE BRADEN: And do you object to having the '981 hearing
6 transcript entered as an exhibit into this proceeding?

7 MR. GLASS: No. Thank you.

8 JUDGE BRADEN: Very good. You both may be seated. We thank
9 you-all for appearing here today and for answering all of our questions.
10 Your answers have helped the panel. We will take this case under an
11 advisement and issue a decision in due course.

12 As a reminder, we ask that you stay here just a bit longer to answer
13 any questions the court reporter may have regarding spelling.
14 We wish you all a very good day, and the hearing is now adjourned.

15 (Whereupon, the above-entitled matter went off the record at 2:00
16 p.m.)

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